Applicant: Gray, et al.	**Examiner**: Ingvoldstad, Bennett
Serial No: 10/611,454	**Art Group**: 2623
Filing Date: June 30, 2003	**Docket No**: ATT030075
Confirm No: 1616	

Title: Interactive Content with Enhanced Network Operator Control

Date: 7/22/2008

Honorable Commissioner of
Patents and Trademarks,
Alexandria, Virginia 22313

Pre-Appeal Brief Request for Review

1.   In the Office Action dated 5/2/2008, the Examiner rejected claims 1-2, 5-9, 12-16
and 19-21 under 35 USC § 102(e) as being anticipated by Omoigui (U.S. Publication No.
2005/0086687); and claims 3-4, 10-11 and 17-18 under 35 USC § 103 (a) as being
unpatentable over Omoigui (U.S. Publication No. 2005/0086687) in view of Agnihotri
(U.S. Publication No. 2003/0163828).   In the Advisory Action dated 6/27/2008, the
Examiner indicated that Applicant's arguments after final were considered but did not
place the application in a condition for allowance. Applicant respectfully submits that
there is a clear deficiency in the prima facie case in support of this rejection and requests
review of the allowability of claims 1-21 pursuant to the Pre-Appeal Brief Pilot Program.

2.   As discussed above, claim 1 was rejected under 35 USC § 102(e) as being
anticipated by Omoigui (U.S. Publication No. 2005/0086687). The applicant respectfully
disagrees with the present rejection because at least one claim element is not met by this
reference. Claim 1 recites in part:

> wherein the determining is independent of any request by the user for the
> alternate content, but based at least in part on a search for alternate content
> having subject matter that is related to <u>subject matter of content being
> viewed by the user when the search is conducted</u>.

In setting forth the basis for this rejection, the Examiner cites the following paragraph of
Omoigui:

[0098] FIG. 12 shows a flow diagram that describes steps in a method in accordance with this embodiment. Step 600 monitors the viewing habits of one or more viewers. Monitoring can take place in any suitable way. For example, each client viewing device 12 (FIGS. 1 and 2) can have an application that logs the time that a viewer spends on any particular channel and the program that is playing. This information can be packaged up and sent to server 14. Step 602 then establishes a correlation between the viewing time and specific events that transpire during the viewing time. Processing to establish the correlation can take place on the client or server end. The correlations that are established can then be used to establish a viewer-information database similar to the one discussed above in connection with FIG. 5. Once a viewer-information database is established, step 604 monitors the electronic presentations or programs. Monitoring can take place as described above. Step 606 determines whether any of the events that might be of particular interest to a viewer have occurred. If none have occurred, then the method branches back to step 604. If, on the other hand, one or more events have occurred, then step 608 notifies the viewer accordingly. Again, notification can take place in any of the ways discussed above. Step 610 is an updating step that updates the correlation between the viewing time and the specific events that a viewer watches. This step can occur at any time and in parallel with the steps discussed above. [emphasis added]

In particular, the Examiner points to the updating step (step 610) and to Omoigui's disclosure that this step can be performed in parallel with the viewing habits monitoring step. Omoigui's updating step 610, only updates "the correlation between the viewing time and the specific events that a viewer watches." So while the Omoigui updates the correlations in parallel with the step of monitoring, Omoigui does not disclose, suggest or teach updating the viewer-information database in real-time.

Said another way, Omoigui describes correlating viewing times and the events that a viewer is watching after they happen. Omoigui does not however teach updating the viewer-information database in real-time. Omoigui discloses performing this step during step 602 on a non-real-time basis. Omoigiu cannot perform the step of monitoring based on subject matter of content being viewed by the user when the search is conducted, because the viewer information database is not updated in real-time.

In addition, in the Advisory action mailed 6/27/2008, the Examiner further postulates that updating of the viewer database were performed every five minutes, the

five minutes old subject matter would still be "related" to the current subject matter being viewed. First, it seems logical to assume that an event would need to be <u>completed</u> before a correlation could be updated. If a viewer is flipping channels, would Omoigui teach that that each channel traversed would create a new correlation? Applicant believes not. In addition, how could viewing time be established if an event is still in the process of being viewed? Second, even after the correlation is established, via some amount of processing, the viewer-information database would need to be updated. Even so, Omoigui does not teach updating the viewer-information database in parallel or even every five minutes.

For these reasons, claim 1 and claims 2-7 that depend therefrom, are patentably distinct from the prior art. In particular, while claims 3-4 were rejected based on the combination of Omoigui and Agnihotri (U.S. Publication No. 2003/0163828), the addition of Agnihotri to the combination does not correct the deficiency of Omoigui as discussed above.

3.   As discussed above, claim 8 was also rejected under 35 USC § 102(e) as being anticipated by Omoigui (U.S. Publication No. 2005/0086687). The applicant respectfully disagrees with the present rejection because at least one claim element is not met by this reference. Claim 8 recites in part:

> wherein the hot key generation portion determines whether to inform the user of alternate content independent of any request by the user for the alternate content, but based at least in part on a search for alternate content having subject matter that is related to <u>subject matter of content being viewed by the user when the search is conducted</u>.

As discussed in conjunction with claim 1, Omoigiu cannot perform the step of monitoring based on <u>subject matter of content being viewed by the user when the search is conducted.</u>

For this reason, claim 8 and claims 9-14 that depend therefrom, are patentably distinct from the prior art. In particular, while claims 10-11 were rejected based on the combination of Omoigui and Agnihotri (U.S. Publication No. 2003/0163828), the

addition of Agnihotri to the combination does not correct the deficiency of Omoigui as discussed above.

4.   As discussed above, claim 15 was also rejected under 35 USC § 102(e) as being anticipated by Omoigui (U.S. Publication No. 2005/0086687). The applicant respectfully disagrees with the present rejection because at least one claim element is not met by this reference. Claim 15 recites in part:

> wherein the instructions cause the processor to determine whether to inform the user of alternate content independent of any request by the user for the alternate content, but based at least in part on a search for alternate content having subject matter related to <u>subject matter of content being viewed by the user when the search is conducted</u>.

As discussed in conjunction with claim 1, Omoigiu cannot perform the step of monitoring based on <u>subject matter of content being viewed by the user when the search is conducted.</u>

For this reason, claim 15 and claims 16-21 that depend therefrom, are patentably distinct from the prior art. In particular, while claims 17-18 were rejected based on the combination of Omoigui and Agnihotri (U.S. Publication No. 2003/0163828), the addition of Agnihotri to the combination does not correct the deficiency of Omoigui as discussed above.

The Examiner is invited to contact the undersigned by telephone or facsimile if the Examiner believes that such a communication would advance the prosecution of the present invention.

RESPECTFULLY SUBMITTED,

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)	ATT030075

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on	Application Number 10/611,454	Filed 06/30/2003
Signature	First Named Inventor James Harold Gray	
Typed or printed name	Art Unit 2623	Examiner Ingvoldstad, Bennett

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
     Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest. See 37 CFR 3.71.
     Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

☒ attorney or agent of record.
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☐ attorney or agent acting under 37 CFR 1.34.
     Registration number if acting under 37 CFR 1.34

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7/22/2008
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☒ *Total of   1   forms are submitted.